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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,457	12/15/2003	Erik J. van der Burg	014139US1	3098
38107 7590 11/09/2010 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P. O. Box 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
BATES, DAVID W				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
11/09/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/736,457

Applicant(s)

VAN DER BURG ET AL.

Examiner

DAVID W. BATES

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-32 and 46-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-32 and 46-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notes of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 14, 2010 has been entered.

Claim Objections

2. The amendments to the claims have overcome the objection to claim 30.

Claim Rejections - 35 USC § 112

3. The rejection of claims 27-32 under the second paragraph of 35 U.S.C. 112 has been overcome by the amendments of October 14, 2010.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 27-32, 46-52 and 58-61 are rejected under 35 U.S.C. 102(e) as being anticipated by Huebner (US 2004/0102776 A1).

6. Regarding claims 27, 31, 32, 46-52 and 58-61, Huebner teaches an implant for attachment to a hyoid bone in that the device is capable of being implanted on any suitable bone or bone surface [0067]. The Huebner device includes an implant body in the form of a pivotable bone plate 80. The plate 80 has a first attachment zone at the

proximal member 82 configured for attachment to a first portion of a hyoid bone and a second attachment zone at distal plate member 84 configured for attachment to a second portion of a hyoid bone. Huebner also teaches a connection between the first and second attachment zones as best seen at fig. 6 where the semi-spherical surfaces interact. The connection allows a pivotal movement of the first and second attachment zones with respect to each other as demonstrated by the movements at 106 and 108. Huebner teaches a lock at the lock screw 112 carried by the body that when locked inhibits the pivotal movement between the first and second attachment zones, as described at [0077]. In that section, Huebner describes that the plate elements are only adjustable when the lock screw 112 is loosened.

7. Regarding claims 28 and 30, the pivotal connection is capable of allowing the plate to be bent by flexing components relative to one another (see fig. 3, for example).

8. Regarding claim 29, the connection structure of Huebner is considered to be a hinge. A hinge is defined to be "a jointed or flexible device that allows the turning or pivoting of a part, such as a door or lid, on a stationary frame." (American Heritage Dictionary, 2000).

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 53-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huebner.

11. Huebner discloses the claimed invention except that Huebner teaches use the connection means of fig. 6 instead of 1) a joint comprising wires, 2) joint comprising a ribbon, or a 3) clevis pin. These are known to be obvious variants of an equivalent structure in the art. Therefore, because these joint means were art- recognized equivalents which accomplish the same result at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute any of the means of pivoting (1) - (3) for the connection means of Huebner.

Response to Arguments

12. Applicant's arguments with respect to claims 27-32 and 46-61 have been considered but are moot in view of the new ground of rejection. The new rejection was necessitated by applicant's amendments to at least claims 27, 46 and 50 in the amendment of October 14, 2010.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID W. BATES whose telephone number is (571)270-7034. The examiner can normally be reached on Monday-Friday 9:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W. B./
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775